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In The

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1336

IN RE APPLICATION OF FRE LE POOLE GRIFFITHS,
FOR ADMISSION TO THE BAR,
Appellant.

On Appeal from the Supreme Court
of Connecticut

MOTION TO DISMISS OR AFFIRM

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Committee of Connecticut,
Appellee.

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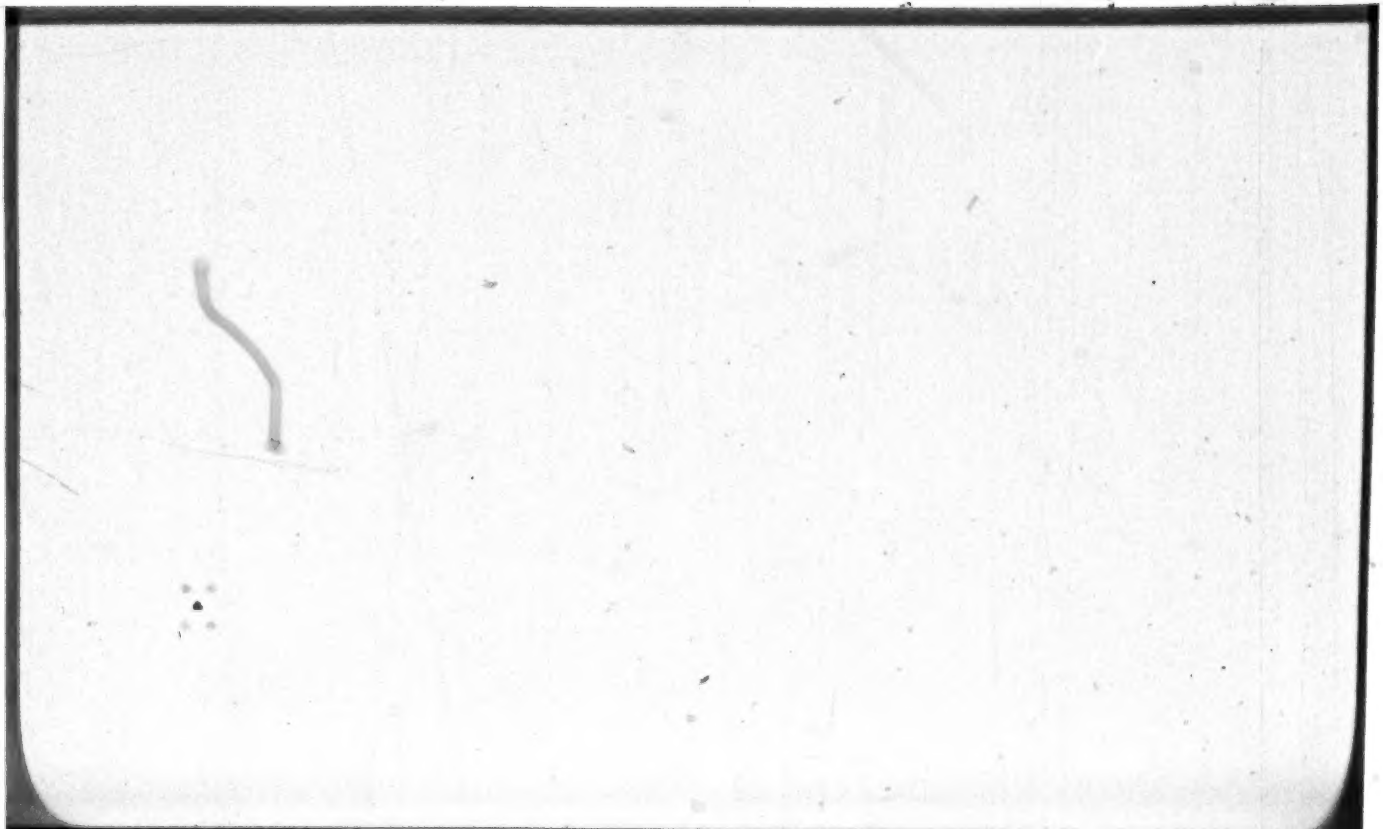

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The Appellee moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of Connecticut on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE.

A.

THE STATUTE.

This appeal raises the question of the validity of the first requirement provided by § 8 of the rules of the Superior Court of Connecticut governing admission to the Connecticut Bar, Practice Book § 8(1). The rule of court relative to the admission of attorneys has the force of a statute. *Re Application of Dodd*, 132 Conn. 237, 241, 43A. 2d 224.

The pertinent part of the rule is as follows:

> "Sec. 8. Qualifications for Admission. To entitle an applicant to admission to the bar, except under Sec. 12 of these rules, he must satisfy the committee:
>
> FIRST. That he is a citizen of the United States."

(Section 12 applies to attorneys of other jurisdictions who must be citizens.)

B.

THE PROCEEDINGS BELOW.

The Appellant is an applicant for admission to the bar of Connecticut. She is a resident and taxpayer of New Haven, Connecticut and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected

to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§ 1427(f), 1430(a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualifications of being a citizen of the United States. On appeal the Supreme Court of Connecticut upheld the constitutionality of § 8(1), and the judgment denying her petition was affirmed.

II.

ARGUMENT

I.

This Appeal Presents No Substantial Question

Although this Court has not specifically passed on the specific question raised in this case, principles of prior decisions apply to and should control the disposition of this appeal.

No previous decision or rule of this Court or any Court has been cited by the Appellant in support of her claim that citizenship is an unconstitutional requirement for admission to the practice of law.

The exclusion of aliens from the profession of law is not a denial of equal protection of the law under the Fourteenth Amendment of the United States Constitution. It is recognized that the prohibition against state denial of equal protection is applicable to aliens as well as citizens. *Truax* vs. *Raich*, 239 U.S. 33; *Takahashi* vs. *Fish and Game Commission*, 334 U.S. 410. The equal protection clause does not guarantee, however, that all persons be treated in the same manner; it only proscribes discrimination which lacks a rational basis for differences in classifications. *McGowan* vs. *Maryland*, 366 U.S. 420. This Court has never held that discrimination based on foreign citizenship, like discrimination based on race is *per se* irrational. It is true that this Court has rejected foreign citizenship as a basis for state restrictions on ownership of property and employment in particular occupations or as sometimes stated "the common occupations of the community." *Oyama* vs. *California*, 332 U.S. 633; *Takahashi* vs. *Fish and Game Commission*, *supra*; *Sei Fujii* vs. *State*, 38 Cal.2d 718, 242 P.2d 617. *Truax* vs. *Raich*, *supra* at 43. The notable exception to the foregoing rule is the exclusion of aliens from the professions. 57 Columbia L. R. 1012, 1026.

In more recent cases this Court has adopted the test of reasonableness, *Graham* vs. *Richardson*, 403 U.S. 365, 371; *McGowan* vs. *Maryland*, 366 U.S. 420, 425; and promoting a compelling state interest. *Shapiro* vs. *Thompson*, 394 U.S. 618. See *Keenan* vs. *Board of Law Examiners*, 317 Fed. Supp. 1350.

Prior to *Schware* vs. *Board of Law Examiners of New Mexico*, 353 U.S. 232 Federal Courts had been reluctant to intervene in suits involving state bar proceedings. In *Schware* this Court recognized the right of a state to require high standards of qualification, but they must have a rational connection with the applicant's fitness or capacity to practice law. This position was reaffirmed in *Law Students Research Council* vs. *Wadmond*, 401 U.S. 154.

In *Keenan* a residence requirement of one year for bar applicants in North Carolina was declared unconstitutional on the authority of *Shapiro* vs. *Thompson, supra*, because the state did not show a compelling state interest. In *Wadmond* the issue of citizenship or six-month residence was not raised.

In a correlative classification this Court has differentiated loyalty oaths required of "a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety." *Speiser* vs. *Randall*, 357 U.S. 513, 527. See *Konigsberg* vs. *State Bar of California*, 353 U.S. 54, noting this distinction. "Lawyers, who are officers of the courts, fit the latter rubric." *Law Students Civil Rights Research Council, Inc.* vs. *Wadmond*, 299 F. Supp. 117, 125 *affirmed* 401 U.S. 154. The Court said as to the oath requiring bar applicants in New York to swear or affirm that they will support the Constitution of the United States as well as that of the State of New York, "there can be no doubt as to its validity." 401 U.S. 162.

The Connecticut Supreme Court, in upholding its court rule requiring citizenship for bar applicants, adequately demonstrated that the rule is within permissible constitutional limits as already defined by this Court in its prior decisions.

The Federal Courts maintain an interest as to who is admitted to practice law by the state. They depend on states' admission rules. An unnaturalized alien could not make the showing required for admission to practice in this Court under Rule 5 of the Supreme Court Rules. 1 Cyc. of Fed. Pro. § 1.55.

It would appear that there can be little doubt that the requirement that bar applicants be citizens is a reasonable classification and the state has a vital interest in maintaining this qualification as a prerequisite. It is clearly within the permissible limits previously outlined by this Court and never rejected by any court decision.

II.

Rule § 8(1) Does Not Contravene The Exclusive Federal Power Over Immigration.

The rule does not violate the supremacy clause of the Constitution by encroaching upon the Federal Legislative scheme dealing with immigrant entry. It is only statutes, rules or regulations which unreasonably burden or restrict interstate movement which must fail. *Shapiro* vs. *Thompson, supra,* at 629. Since it is agreed that an overwhelming number of states require the qualification of citizenship for admission to practice law the general balance of alien population in this country will hardly be affected as it might in the case of state restrictions on employment of aliens in "the common occupations of the community."

III.

THE CONNECTICUT RULE DOES NOT VIOLATE INTERNATIONAL PUBLIC POLICY AND THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION BY BURDENING APPELLANT'S RIGHT FREELY TO DETERMINE HER NATIONALITY.

The Appellant cites no authority which directly supports her theory, but relies on cases restricting state regulations limiting freedom of speech unless there is shown to be a "compelling state interest." The cases cited involve attempts to control speech directly. This Court in its resolution of First Amendment cases such as freedom of speech, press and assembly has subordinated them to more public interests. See *Schenck* vs. *United States*, 249 U.S. 652; *Dennis* vs. *United States*, 341 U.S. 494.

Dual allegiance presents problems that have been recognized. *Kennedy* vs. *Mendoza-Martinez*, 372 U.S. 144, 187; *Rogers* vs. *Belli*, 401 U.S. 815. In answer to the Appellant's claim the Connecticut Supreme Court said in its decision in this case:

> "The rule is a classic example of a state regulation designed not to restrict a right but to protect rights. It is not designed to lead the petitioner into a circumstance where she will be forced to choose between conflicting allegiances but rather to assure that the force of her continued allegiance to a foreign power will not be brought to bear in areas affected with significant public interest in a state where she chooses to remain an alien. By withholding her allegiance from the United States she 'leaves outstanding a foreign call on . . . [her] loyalties which international law not only permits our government to recognize but commands it to respect.' *Harisiades*

vs. *Shaughnessy*, 342 U.S. 580, 585, 72 S. Ct. 512, 96 L. Ed. 586." 163 Conn. — (33 Conn. L. J., No. 33, pp. 1, 7).

In effect the Appellant is requesting this Court to decide the issue on policy and this Court has stated that even if an approach might be wise policy "decisions based on policy are not for us to make." *Law Students Research Council, Inc.* vs. *Wadmond, supra*, 169.

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which the cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the case by the Supreme Court of Connecticut.

Respectfully submitted,

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215 Church Street,
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Attorney for Appellee.

May 10, 1972.